SUPREME COURT, U. S.

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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1968

No. 1113

THE TELEPHONE USERS ASSOCIATION, INC.
(a non-profit association)

Petitioner,

vs.

THE PUBLIC SERVICE COMMISSION OF THE DISTRICT OF COLUMBIA
and
C & P TELEPHONE CO., INC.

Respondents

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

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INDEX

Opinions Below 2
Jurisdiction 2
Questions Presented 2
Statutes Involved 3
Statement of the Case 4
Reasons for Granting the Writ 7
Conclusion 12
Appendix 14

CITATIONS

Cases:

Bebchick v. Public Utilities Commission, 115 U.S. App. D.C. 216, 318 F.2d 187 (1963) 8, 9

Lindheimer v. Illinois Bell Telephone Co., 292 U.S. 151 (1934) 8, 9

Washington Gas Light Company v. Baker, 1951, 188 F.2d 11, 88 U.S. App. D.C. 115 12

Statutes:

28 U.S.C. Section 1254(1) 2

D.C. Code (1950):

43-301 ..... 3, 11
43-408 ..... 3, 12
43-411 ..... 3, 12
43-412 ..... 3, 10
43-705 3
43-707 ..... 3, 6, 8

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PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

The Telephone Users Association, Inc., a non-profit association chartered in 1963, by the District of Columbia, for itself and other telephone users similarly situated, prays that a Writ of Certiorari issue to review the Judgment of the United States Court of Appeals for the District of Columbia, entered in the above case on October 21, 1968. Additional time to and including March 6, 1969, to file this petition, was granted on the 22nd day of Janu-

ary, 1969, by Earl Warren, Chief Justice of the United States.

OPINIONS BELOW

The opinions of the Public Service Commission appealed from are found in the Joint Appendix pp. 41-86, a copy of which was brought here as part of the Record. The opinion of the District Court dated June 5, 1967, is unreported and is reproduced in the Appendix hereto. The judgment of the United States Court of Appeals dated October 21, 1968, is also unreported and is printed in the Appendix hereto.

JURISDICTION

The judgment of the Court of Appeals was made and entered on October 21, 1968, and a copy is appended to this Petition. Additional time to file this Petition, to and including March 6, 1969, was granted on 22 January, 1969, by Earl Warren, Chief Justice of the United States. The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1).

QUESTIONS PRESENTED

1. Whether an attorney who has represented the public in a rate case in which a telephone company's claim for increase has been pared from $10,500,000 per year to $2,300,000 per year, thus saving the public more than $8,000,000 per year in additional revenues, is entitled to a fee under the common law, under the statute which permits the telephone company to pay its own counsel for prosecuting its case while passing the costs of the prosecution onto the consumer, under a theory of "Savings Fund," or other theory.

2. Whether the public is entitled to a refund or other benefits where a telephone company which has been found to be entitled to a 6.25% return thereafter earns in excess of 7% for a number of years without the telephone company or the Public Service Commission moving to readjust the

rates in the public interest, and when such failure to protect the consumer interest in just and reasonable rates causes more than a million dollars annually of the consumer's money to go to the stockholder interests.

STATUTES INVOLVED

The following statutes are involved: (all references are to D.C. Code)

43-301 (Charges to be reasonable, just and nondiscriminatory)

43-408 (Commission may investigate unjust and discriminatory rates) "Upon its own initiative . . . that any of the rates . . . are in any respects unreasonable or unjustly discriminatory . . . . The commission may . . . make such investigation as . . . necessary . . . ."

43-411 (Commission shall have power to . . . order to be substituted therefore such rates . . . as shall be just and reasonable.)

43-412 (Expenses of investigation) ". . . all expenses of any litigation, including appeals from any such proceeding . . . shall be borne by the public utility investigated . . . and such expenses with interest at 6% per annum may be charged to operating expenses . . . and be allowed for in the rates to be charged by such utility."

43-705 (The reviewing court shall accompany its order by by a statement of its reasons for its action . . .)

43-707 Suspension of Order ". . . if in any petition . . . it is alleged that substantial and irreparable property loss would be occasioned . . . pending determination of said appeal, the court shall set a time and place after not less than three days notice to the commission (during which period the execution of the order or decision shall be stayed). . ."

STATEMENT OF THE CASE

Petitioner is a non-profit institution chartered by the District of Columbia in 1963 and appears here on behalf of itself and other telephone users of the District of Columbia, who are similarly situated.

Petitioner seeks review of orders of the Public Service Commission which granted a rate increase to the telephone company, and of holdings by the District Court and the Court of Appeals which affirm those orders. Petitioner also seeks an award of fees for its counsel. Finally, Petitioner seeks a refund to the consumer of several million dollars collected by the telephone company over a period of years in excess of the authorized rate of return in such exact sum as the Court may later determine.

On July 29, 1954, P.U.C. issued Order No. 4096, which held that the telephone company was entitled to 6.25 per cent return on its authorized investment. This Order followed a formal rate hearing which is known as F.C.N. 430. The earnings of C & P (D.C.) since 1954 were set forth as follows by the Telephone Company. Figures for 1955-61 are from the testimony of telephone witness Conrad, before PSC, J.A. 4, 5. C & P Annual report for 1962 is the basis of the 1962 figures, J.A. 225.

1955	6.74
1956	6.66
1957	6.55
1958	6.64
1959	6.90
1960	7.49
1961	7.54
1962	7.05 or 7.34, according to method of calculation (Annual Report of C & P, 1963), J.A. 4, 5

The rate base to which the 6.25 per cent was applied for the above years was always well above $100,000,000 and

stood in 1964 at $148,313,000, PSC Order No. 4887 at page 41, J.A. 81.

In 1963, the telephone company (C & P of D.C.) petitioned the Public Service Commission for an additional gross revenue of approximately $10,500,000. GSA intervened on behalf of the U.S. Government as a telephone subscriber and Petitioner and others also intervened. Hearings began December 9, 1963, were concluded July 2, 1964, produced 4,096 transcript pages of testimony and 108 exhibits during 32 full days of hearings. Briefs and oral arguments followed. See PSC Order No. 4887, dated December 22, 1964, at page 1, Appendix p. 3. GSA argued that the gross income should be reduced by three to four million dollars per annum since C & P was already in fact earning 7.4 per cent, J.A. 22, 23. Petitioner moved to dismiss the case on the grounds that the telephone company had failed in its case in chief to consider pertinent local conditions and economic factors in presenting its case in chief, as required by *F.P.C. v. Hope Natural Gas Co.*, 320 U.S. 591 (1944), 64 S. Ct. 281, in view of its presentation of national figures only without consideration of comparisons of the local telephone company with other business enterprises in this area such as the Gas, Electric, and Transit Companies, as to earnings and risks. See motion to dismiss application of C & P, J.A. 37, Appendix p. 1. Petitioner also filed a "Petition Requesting Return to Telephone Users of Monies Collected by the Telephone Company Above the Legally Authorized Rate Since 1954" J.A. 38, Appendix p. 2. These pleadings were denied and PSC, after holding that the telephone company was entitled to 6.25 per cent as "a fair and reasonable rate of return," Order No. 4887, page 41, J.A. 81, Appendix p. 4, awarded to the telephone company an annual increase in gross operating revenue of $2,346,900, Order No. 4899, dated February 18, 1965, J.A. 83, Appendix p. 4.

All motions by petitioner were denied.

The District Court affirmed the decision on the 5th of June, 1967, see Appendix p. 5 and the Court of Appeals

on October 21, 1968, affirmed the order of the District Court, Appendix p. 6.

While the case was in the District Court, Petitioner moved under D.C. Code 43-707 to suspend the order for increased rates pending appeal and alleged that substantial and irreparable property loss would be occasioned. This motion was eventually set down for hearing after notice, and was denied, and during the interim period between notice and hearing, the telephone company continued to collect the increase in rates. Petitioner therefore moved in accordance with 43-707 to require the telephone company to refund the money collected during the period between the time when the motion was set down for hearing and the time it was actually heard, at approximately $7,000 per day, and requested that counsel fees should be paid to its counsel from this fund which had been created by his work. 43-707 clearly states authority for the above motions in the following words:

> "Suspension of Order . . . if in any petition . . . it is alleged that substantial and irreparable property loss would be occasioned . . . pending determination of said appeal, the court shall set a time and place after not less than three days notice to the commission (during which period the execution of the order or decision shall be stayed . . .)"

These requests by Petitioner were also denied.

REASONS FOR GRANTING THE WRIT

A. The Question, whether an attorney who has participated in reducing the claims of a public utility for additional monies should be paid for his services, is a matter of great public interest as well as unusual novelty since it affects thousands of attorneys who might volunteer their services in the interest of consumers who might otherwise not be able to hire an attorney.

Petitioner participated in a proceeding here, which cut down the telephone company' s claim for additional revenues from $10,500,000 per year to $2,300,000 per year. This represents a saving to the public of $8,000,000 per year. The average consumer could not afford a lawyer to represent him in such a proceeding, because his prospective increase in rates or stake in the proceeding was less than $10 per year. Also the nature of the proceeding is so expensive that the telephone company paid its own trial counsel $60,000 for the work before PSC alone.

While the Public Service Commissions in theory represent the consumers (as well as the stockholders), the earnings of the D.C. telephone company since 1954 as shown above support a clear argument that the consumer may need representation in such proceedings quite apart from if not in addition to commissioners who are politically selected.

If this Court holds that lawyers who volunteer their serv services in similar circumstances are entitled to fees for their labors, it will encourage thousands of lawyers over the country to volunteer their time to one of these lengthy rate proceedings and thus inspire much needed representation of the consumer interest in utility rates.

B. The Rulings below on 43-707 of the D.C. Code were such as to require this Court to exercise its supervisory powers and take corrective action.

Section 43-707 clearly states that where a petitioner alleges substantial and irreparable property loss as a result of a Public Service Commission order, that order is suspended from the time that the Court sets the petition down for hearing until the time that the Court hears the matter. Supra, p. 3.

That petitioner made such allegations is not disputed. Moreover, in this case, the telephone company collected more than $7,000 a day as a result of its increase and it continued to collect this money during the period described above. In view of the migratory nature of our population and the time required to prosecute a case, the injury would clearly be irreparable to thousands of telephone users who would pay the increase and move out of the area before the money could be refunded, if any were refunded. Not only were the required tests as to bare allegations met, but there were clear facts which supported these allegations. When the telephone company continued to charge the full increase in rates, despite 43-707, it took money from the consumer at the rate of $7,000 or more a day which it should have been required to return for the period beginning with the day when the matter was set down for hearing and ending with a day that it was heard. This would create a "positive fund" of more than $100,000 which would be refundable to consumers, and from this fund counsel would be unquestionably entitled to a portion for his work in creating it. *Lindheimer v. Illinois Bell Telephone Co.*, 292 U.S. 151, (1934); *Bebchick v. Pub. Util. Commission*, 115 U.S. App. D.C. 216, 318 F.2d 187 (1963). The Courts below, in denying the petitioners motions under 43-707, so far departed from the acceptable traditional standard that this Court should exercise its supervisory power and rectify the matter.

C. Payment Based Upon the Theory of "Savings Fund"

It is undisputed, even by the telephone company in its papers below, that undersigned counsel would be entitled to a fee from any fund of money which the Court would refund in this case. *Lindheimer v. Illinois Bell Telephone Co.*, 292 U.S. 151 (1934); *Bebchick v. Pub. Util. Commission*, 115 U.S. App. D.C. 216, 318 F.2d 187 (1963). Such a theory seems to say that where there is a positive fund, of tangible dollars, to be returned to the consumers, then the lawyer who created that fund is entitled to some of the money which he helped create by his labors.

Petitioner respectfully submits that $8,000,000 saved to the consumers each year since 1965, through legal work in which undersigned counsel participated is just as meaningful as cash money returned to the consumer. Money saved is just as good as money given back. Thus, a "Savings Fund," a pool of dollars which has been saved to the consumer, has been created by work in which counsel participated.

For his work in helping create the Savings Fund, counsel should be paid. While it is arguable that the telephone company asked for more than it ever expected to get, it is also arguable that telephone company counsel, in asking for $10,500,000 increase annually, was acting in good faith and believed that he had a case. So while we cannot say how much C & P would have received if petitioner had not participated, we do know that petitioner participated and that $8,000,000 annually was given less than telephone counsel requested.

Counsel does not allege that he is solely responsible for the $8,000,000 in annual savings to the public. It would in fact be impossible to determine the exact weight which each counsel applied to the final decision, and for that very reason, undersigned counsel, and other counsel who request payment for their participation, should be paid in accordance with subsequent orders of this Court and under its supervision.

Section 43-412 of the D.C. Code deals with the expenses of a rate proceeding and authorizes the telephone company to pay the expenses and pass them on to the consumer at 6% interest, as an operating cost. Under this statute, the telephone company paid its counsel for the proceeding before the Public Service Commission alone the sum of $60,000 to represent the stockholder's interest in rates as against the consumers' interest in just and reasonable rates. The telephone company then passed the cost of its lawyer onto the backs of its consumers with 6% profit to itself. Since the statute is worded as it is and cannot, (in view of the intent of public utility regulation to balance the interests of consumer and stockholder) equitably be held to favor the stockholder over the consumer, the true meaning of the statute must be that the lawyers who labor in behalf of the consumer should be paid where either a "Positive Fund" or a "Savings Fund" has been created, and the cost of such legal fees should be paid by the telephone company and treated as a cost of operation, thus thinly spreading them over the mass of the consumers by including same as a cost of telephone operation. Needless to say, the telephone company will not agree to this even though they will earn 6% on the money by doing so, because under its theory, the consumer must pay for the stockholder's lawyer in a rate proceeding but cannot gain the value of a similar benefit for the consumers themselves. The problems of recruiting funds from individual users are so great, considering the small economic stake which each individual has in each rate increase, that individual solicitation is impractical. Also, under a contribution system, non-contributors benefit at the expense of contributors. Compared to ten dollar contributions, a spread of a few pennies per each consumer is preferable. By adopting the theory of Savings Fund, this Court will encourage attorneys to protect the public interest in cases where there is a belief that the consumer needs more representation than might be given him by the politically selected personnel who sit on the public service commissions in a rate case. The extent to which public utility

commissions represent the public rather than the utilities, is certainly debatable, as is shown by the earnings rate of C & P 1955-63. Granted, some evils might arise from this system, but courts are experienced in dealing with and curing evils.

D. Petitioner respectfully submits that on the issue of refund this case presents an important question which merits the exercise of the supervisory powers of this Court.

The failure of the Public Service Commission to take action to reduce telephone earnings from 1954 to 1963 and particularly 1960 to 1963, when they exceeded 7%, was a woeful neglect of its public duties. Therefore, the Appellate Court should have granted a refund to the consumers and its failure to do so requires this Court to take jurisdiction and exercise its paramount supervisory powers.

The rate base to which the 6.25 per cent was applied for the above years was always well above $100,000,000 and stood in 1964 at $148,313,000, PSC Order No. 4887 at page 41, J.A. 81, Appendix p. 4.

It is clear therefore that the telephone company was permitted to collect and retain millions of dollars for the years shown above, beyond the 6.25 allowable rate of return which was granted in 1954, and that nothing was done to protect the consumer interest in the just and reasonable rates which were required to bring the earnings of the company down to 6.25. If we concede for the sake of argument that rates cannot be adjusted by a commission with pinpoint mathematical exactness, we must also concede that where the earnings of a utility follow the pattern shown above, they go far, far beyond any reasonable margin of error and can arguably be said to lie clearly in an area of such woeful neglect of the public interest by both the telephone company and the Public Service Commission as to merit a refund.

Reference to the D.C. Code underlines Petitioner's argument as made above. 43-301 requires that the tele-

phone company charges . . . "shall be reasonable, just and non-discriminatory." The same statute holds that every unjust or unreasonable discriminatory charge . . . "is prohibited and is hereby declared unlawful."

43-408 authorizes the commission to make investigations "Upon its own initiative." And 43-411 states that "the commission shall have power to . . . order to be substituted therefore such rates . . . as shall be just and reasonable."

In *Washington Gas Light Company v. Baker,* 1951, 188 F.2d 11, 88 U.S. App. D.C. 115, it was held, in line with the statutes just quoted, that "the commission must safeguard both the investor interests against confiscation and the consumer interests against exorbitant rates."

In the years 1960 and 1961 alone, the telephone company collected well in excess of $1,000,000 per year beyond its authorized 6.25 return, to single out owning the most glaring abuses.

The telephone company, seeing how its earnings were proceeding, cannot hide behind the inaction of the Utilities Commission and argue that it should retain its surplus earnings, for the telephone company has as much a duty to ask for a rate decrease when things are going too well as it has a right to ask for a rate increase when it reasonably apprehends that one is necessary. No one safeguarded the consumer interests against exorbitant rates during the period understudied. It is respectfully argued that the inaction of the Public Service Commission constituted such a neglect of the public interest as to make a refund imperative.

CONCLUSION

The ruling of the Court of Appeals dealt with the voluminous papers in this case in one word, "affirmed." This is so clearly erroneous as to require this Court to exercise its supervisory powers. The issue of refund to consumers where the Public Utilities Commission grossly neglects the interests of consumers and permits an equitable imbalance of millions of dollars in favor of stockholders, is

a matter not of local, but of national importance and one upon which this Court should speak the law to the whole nation. So also, should the Court speak to the thousands of lawyers who, doubtful of the representation which certain public utilities commissions selected through local political considerations might give to the consumer interests might wish to represent that consumer interest, reinforced by the knowledge that they might be paid by the Court not only under the theory of positive fund, or monies returned to the consumer, but the theory of savings fund or monies saved by the consumer as a result of a lawyer's work. The case therefore is one of those cases where the Court of Appeals has so departed from settled rules, and has failed to deal with important questions, as to justify a hearing on certiorari and the writ should be granted.

Respectfully submitted,

ARTHUR S. CURTIS
816 National Press Bldg.
Washington, D.C. 20004
Counsel for Petitioner

5 March 1969

APPENDIX 1

NOTED:
APR 7 1964
Executive Secretary

P.U.C. No. 3718
F.C. 494/29

PUBLIC UTILITIES COMMISSION
OF THE DISTRICT OF COLUMBIA

IN THE MATTER OF [J.A. 37]

APPLICATION OF THE CHESAPEAKE AND POTOMAC TELEPHONE COMPANY for Authority to increase its existing schedules and tariffs and rates

P.U.C. FORMAL CASE No. 494

MOTION TO DISMISS APPLICATION OF C. AND P.

NOTICE OF MOTION:

To the applicant and other parties in the above entitled matter, please take notice, that on Wednesday April 8, 1964 at the conclusion of the testimony of the present witness upon cross examination, Mr. Haley, the Telephone Users Association, Inc. a non-profit association incorporated in the District of Columbia in 1963, by counsel will move this Commission to dismiss the application for authority to increase existing schedules and tariffs and rates, for the following reasons.

1. The Applicant has failed to bring forward evidence to substantiate its legal premises of judicial basis for award of rate of return.

Applicant has stated repeatedly that it relies on the Bluefield case, 262 US 668. But that case is one in which the Supreme Court stated:

> "A public utility is entitled to such rates as will permit it to earn a return on the value of the property it employs for the convenience of the public equal to that being made at the same time,

> and in the same region of the country on investments in other public undertakings which are attended by corresponding risks and uncertainties; but it has no constitutional right to profits such as are realized or anticipated in highly profitable enterprises or speculative ventures."

In its case in chief, the applicant has failed to come forward with figures based upon business enterprises in the D.C. area and of other public undertakings in this area. Therefore, the applicant in presenting its case has failed to meet the test set down by the case upon which it relies, and its case must fall.

2. And for such other reasons as may be apparent to the Commission or which may become pertinent upon oral argument.

Respectfully,

Arthur S. Curtis,
counsel for the
Telephone Users Association
816 National Press Bldg., D.C. 4

APPENDIX 2

[J.A. 38]

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE DISTRICT OF COLUMBIA

IN THE MATTER OF

Application of THE CHESAPEAKE AND POTOMAC TELEPHONE COMPANY for Authority to Increase Its Existing Schedules and Tariffs and Rates.	P.U.C. No. 3718 Formal Case No. 494

PETITION REQUESTING RETURN TO TELEPHONE USERS OF MONIES COLLECTED BY THE TELEPHONE COMPANY ABOVE THE LEGALLY AUTHORIZED RATE SINCE 1954

1. The Telephone Users Association, a non-profit corporation chartered in the District of Columbia, by Counsel, respectfully petitions this Commission for an order directing the C & P Telephone Company, Inc. to return to the telephone users of the District of Columbia moneys collected by the C & P Telephone Company since 1954 in excess of the amount allowed by Order No. 4096 of this Commission dated July 29, 1954 in P.U.C. No. 1812/56 Formal Case No. 430 and any supplemental orders. The facts within the knowledge of this Commission do or should show that the C & P Telephone Company has consistently collected more than the 6.25 legal rate allowed by this Commission and the overage therefore belongs not to the C & P Telephone Company but to its customers and should now be returned. In 1955 C & P earned 6.74; in 1956, 6.66; in 1957, 6.55; in 1958, 6.64; 1959, 6.80; 1960, 7.49; 1961, 7.54; 1962, in excess of 7.0; 1963, in excess of 7.0. Thus, several million dollars has been unjustly collected from the telephone users, knowingly and consistently and with intent to act illegally outside the PUC order.

2. The undersigned further requests that the gross sum due and owing to the telephone users be transferred from C & P to a fund in trust for the telephone users of the C & P Telephone Company from which fund all proveable claims shall be paid, the balance to be held in trust and administered in such manner as is later determined.

3. In support of the foregoing motion your petitioner respectfully requests that this Commission take judicial notice of its own orders, the District of Columbia Code and all provisions empowering this Commission including Sections 43-310, 43-314, and the opinion of the United States Court of Appeals for the District of Columbia circuit in D.C. Transit System, Inc., Appellant, v. Public Utilities Commission of the District of Columbia, Appellee, 292 Fed 2d 734, 735 (1961).

Your petitioner further requests that C & P Telephone Company be required to pay interest, cumulatively, on the said sums unjustly and illegally received over and above the order of 1954 allowing 6.25 legal return.

Your petitioner further requests that in order to insure that such wanton, willful, and intentionally illegal conduct should not occur again, a punitive damages sum equal to the amount taken beyond the order, be added to the above fund to support an organization of telephone users acting as a police agency.

Respectfully,

Arthur S. Curtis, Counsel for
The Telephone Users Assoc.

APPENDIX 3

[JA 41]

PUBLIC SERVICE COMMISSION OF THE DISTRICT OF COLUMBIA

Order No. 4887

[Caption omitted in printing]

OPINION, FINDINGS AND ORDER

The Chesapeake and Potomac Telephone Company (the "Applicant" or "Company") seeks an additional gross revenue of approximately $10,500,000, or after taxes, a net sum of approximately $4,738,000. The Applicant proposes to raise this additional revenue by increasing certain existing rates, principally the residence individual line from $5.75 to $7.00 and the business individual line from $7.00 to $8.00. On the basis of the Applicant's estimates of plant, revenues, and expenses, related to its intrastate (local) operations, the proposed increase would result in a rate of return on net original cost investment of 8.06 per cent. Basically, the contention of the Applicant is that since 1960 it has experienced a steady decline in its rate of earnings; that the magnitude of the investment currently being made, and to be made in the future, is such that under existing rates its present return is inadequate; and that a minimum of 8 per cent is necessary to provide a "fair and reasonable return."

The application was filed on September 7, 1963, and on October 28, 1963, General Services Administration (GSA), representing the United States Government as a telephone subscriber, and attorneys Walter Mayo and Gordon M. Shaw, appearing *pro se*, intervened. On December 9, 1963, the opening day of the public hearing, counsel for the Federation of Citizens Associations entered an appearance. On December 27, 1963, subsequent to the submission of the

Applicant's direct case, Arthur S. Curtis, an attorney, requested leave to intervene on behalf of himself and an association of limited organization and membership, known as the Telephone Users Association (TUA). Intervention was granted on December 31, 1963. Of the intervenors, only GSA fully participated in all phases of the proceedings.

This probably has been the most extensive rate case ever conducted by this Commission. The hearing began on December 9, 1963, pursuant to notice dated November 19, 1963, and concluded on July 2, 1964. The record contains 108 exhibits and 4,096 transcript pages of testimony received during thirty-two full days of hearings. In August, 1964, briefs were filed by the Applicant, GSA, and TUA and on September 9, 1964, oral arguments were made by the Applicant, GSA, TUA and the Federation of Citizens Associations.

* * * * * * *

APPENDIX 4

[From page 41 of Order, JA 81]

FINDINGS

Based upon the record made in these proceedings and the foregoing analyses and considerations, this Commission finds that:

* * * * * *

4. The 1964 end-of-year rate base is appropriate for determination of the Applicant's future revenue requirements, and the adjusted 1964 end-of-year rate base is $148,313,000;

* * * * * *

6. A fair and reasonable rate of return is 6.25 per cent.

* * * * * *

[From JA 83]

Order Correcting and Clarifying Opinion and Amending Findings and Order in Formal Case No. 494

In consideration of the Motions for Reconsideration, filed in Formal Case No. 494 by the several parties of record, the Commission corrects and clarifies its opinion and amends its findings and Order in the following respects:

* * * * * *

7. The Applicant is entitled to an increase of $1,112,900 in net operating income, which, before taxes, amounts to an increase of $2,346,900 in gross operating revenue.

* * * * * *

APPENDIX 5

[JA 215]

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

TELEPHONE USERS ASSOCIATION, INC.,

Petitioners,

v.

PUBLIC SERVICE COMMISSION OF THE DISTRICT OF COLUMBIA, et al.,

Respondents.

Civil Action Nos. 909-65, 2916-65

[Filed June 5, 1967]

ORDER

This cause having come on to be heard January 30 and 31, 1967, and February 1 and 2, 1967, on petitioners' appeal from Orders Nos. 4887, 4899 and 4976 issued in Formal Case No. 494 by the Public Service Commission of the District of Columbia, and upon consideration of the oral argument in open court by counsel for petitioners, for the Commission, and for the respondent-intervenor The Chesapeake and Potomac Telephone Company, together with the pleadings and papers filed herein by all the parties, and after a review of the entire record certified to this Court,

THE COURT FINDS AND CONCLUDES, all as is more fully set forth in the Statement of Reasons accompanying this order as required by 43 D.C. Code 705, that the findings of fact of the Public Service Commission in the orders presently at issue were not unreasonable, arbitrary or capricious, and that petitioners were not prejudiced by any errors of law contained therein. Wherefore, for the reasons stated, it is this 5th day of June, 1967,

ADJUDGED AND ORDERED:

1. That the petitions of appeal in Civil Action Nos. 909-65 and 2916-65 be, and the same are, hereby dismissed; and

2. That Orders Nos. 4887, 4899 and 4976 issued in Formal Case No. 494 before the Public Service Commission of the District of Columbia be, and the same are, hereby affirmed.

Jno Lewis Smith, Jr. (s)
Judge

APPENDIX 6

UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

Nos. 21,318 and 21,319 September Term, 1968.

[Filed October 21, 1968]

[Caption omitted in printing]

Appeals from the United States District Court for the District of Columbia.

Before: Bazelon, Chief Judge, Wilbur K. Miller, Senior Circuit Judge, and Danaher, Circuit Judge.

JUDGMENT

These cases came on to be heard on the record on appeals from the United States District Court for the District of Columbia, and were submitted on the briefs of the parties.

ON CONSIDERATION THEREOF, it is ordered and adjudged by this court that the order of the District Court appealed from in these cases is affirmed.

Per Curiam

Dated: October 21, 1968